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AGREEMENT FOR PROFESSIONAL SERVICES

FOR CONTRACTTITLE

CONTRACT NO. A#####A

BETWEEN

KING COUNTY

AND

LEGALNAME

**EXECUTED COUNTERPARTS
COUNTERPART NO. _____ OF 4**

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AGREEMENT FOR PROFESSIONAL SERVICES

FOR

CONTRACT TITLE

CONTRACT NO. A#####A

THIS AGREEMENT, made and entered into by and between King County, through the Department of @ ("County") and LegalName ("ConsultantName"), a corporation with a place of business at @, @, Washington, 98@ ("Consultant"), collectively referred to as "Parties", shall be effective upon the authorized signatures of both Parties to this Agreement ("Effective Date").

WHEREAS, The County desires to retain the Consultant to perform certain professional services, including engineering services necessary to perform @DESCRIPTION OF SERVICES ("Project");

Whereas, the County desires to obtain State Revolving Funds ("SRF") for this Project, which funds contain United State Environmental Protection Agency ("EPA") money administrated by Washington State Department of Ecology ("WSDOE"), this contract contains contract requirements mandated by EPA for eligibility of SRF; and

WHEREAS, the Consultant represents it has available and offers to provide qualified personnel and facilities necessary to accomplish such services required for the Project within the required time and that there are no conflicts of interest prohibited by law in entering into this Agreement with the County;

The Parties enter into this Agreement. The term Agreement and Contract shall be used interchangeably and refer to this Agreement, Contract No. A#####A.

SECTION 1. PERIOD OF PERFORMANCE

- A. All required work and services specified in the terms and conditions of this Agreement shall be completed on the @ day of @, 200@ unless extended or terminated earlier by King County pursuant to the terms and conditions of this Agreement.

IF PHASED WORK SUBSTITUTE THE FOLLOWING PARAGRAPH FOR A. DELETE IF UNUSED:

- A. All required work and services specified in the terms and conditions of this Agreement for Phase(s) @, @PhaseTitle, shall be completed on the @ day of @, 200@ unless extended or terminated earlier by King County pursuant to the terms and conditions of this Agreement. King County reserves the right to amend this Agreement to add Phase(s) @, @PhaseTitle. The County also reserves the right to let the Agreement expire at the completion of Phase @ and to select another consultant to perform the additional study and/or phases.
- B. Time. Time is a material consideration in the performance by the Consultant under this Agreement. The Consultant shall complete its work and services within the Project schedule, including any established milestones and task completion dates, and the Period of Performance, set forth in the Scope of Work. The completion dates for tasks may be modified by a written directive; however, the Period of Performance for the Agreement may only be modified through an amendment. No completion dates shall be extended because of any unwarranted delays attributable to the Consultant. Completion

dates may be extended in the event of a delay caused by the County which results in a delay in the performance of an affected task, or because of unavoidable delay caused by any governmental action or other conditions beyond the control of the Consultant, which could not be reasonably anticipated and which results in a delay in the performance of an affected task.

- C. Time Extensions. The Total Price, Period of Performance and task budgets shall not be increased because of any unwarranted delays or costs attributable to the Consultant. In the event of a delay not attributable to the Consultant which (1) delay could not be reasonably anticipated and (2) results in an increase in costs to perform the work, the County may, through the execution of an amendment, increase the Total Price, Period of Performance and/or task budget.

SECTION 2. ADMINISTRATION AND SUPERVISION

- A. COUNTY. Management and general supervision for the Project will be the responsibility of King County, Department of @.
1. The Department Director or its designee shall be identified in writing at the time of Contract execution. The Department Director and its designee are the only authorized County personnel who may sign amendment(s) and authorize changes to the Total Price, Period of Performance, and Fixed Professional Fee.
 2. An employee of the County, hereinafter called the "Project Representative," who shall be designated in writing by the County, shall perform day-to-day management of this Contract.
 - a. Unless otherwise indicated in writing by the Department Director or its designee, the Project Representative will issue notices to proceed, approve all requests for payment, authorize termination or modification of tasks, and approve in writing changes to the task budgets outlined in the Cost Summary, Exhibit B attached hereto and incorporated by reference, provided the changes do not impact the Total Price, Period of Performance, and the Fixed Professional Fee.
 - b. The Project Representative will also be responsible for determining when the Consultant has satisfactorily performed all work and for ensuring that the Consultant complies with all provisions of this Agreement, including non-discrimination and affirmative action requirements.
 3. During the administration of this Agreement, the Project Representative shall ensure that the County receives the services and products specified in Exhibit A, Scope of Work, for the Not to Exceed Total Price. Exhibit B, Cost Summary, establishes allowable costs for the overall scope of work and the allowable costs associated with the components tasks that comprise the scope of work.
 - a. Although the County expects the Consultant to use the individuals identified in Exhibit B for the associated tasks/subtasks, the County recognizes that there may be some changes in personnel and minor shifting of hours within a task; provided however, the cost associated for each task shall not be increased or changed as a result of these changes and there shall be no shifting of costs between tasks except as authorized in writing by the Project Representative in accordance with Section 4.
 - b. The County has established assumptions for the number of meetings and length (duration) of those meetings, recognizing that some meetings may be shorter in

duration, some meetings longer in duration, and/or that two (2) meetings lasting two hours may replace one (1) meeting lasting four hours. Accordingly, the County anticipates that there may be some minor adjustments to the number of meetings and the duration of the meetings that will not impact the Not to Exceed Total Price or Fixed Professional Fee. If the number of meetings and/or duration of meetings are changed as a result of a scope change, the County will process an additive or deductive amendment.

- B. **CONSULTANT.** The Consultant represents that it has, or will obtain, all personnel necessary to perform the services required under this Agreement and that such personnel shall be qualified, experienced and licensed as may be necessary or required by laws and regulations to perform such services. All services required under this Agreement shall be performed by the Consultant, its employees, or by subconsultants whose selection has been authorized by the County; provided, that the County's authorization shall not relieve the Consultant or its subconsultants from any duties or obligations under this Agreement or at law to perform in a satisfactory and competent manner. All contractual duties, requirements and obligations that the Consultant owes to King County shall also be owed to King County by the Consultant's subconsultants retained to perform the work pursuant to this Agreement. The term "Consultant" shall refer to ConsultantName and all of its subconsultants.
1. Authorized Subconsultants. The Contract shall identify in the Cost Summary, Exhibit B, the subconsultants who are authorized to perform work under this Contract.
 2. Process for Adding or Removing Subconsultants. If during the term of this Contract, the Consultant wishes to add or remove a subconsultant, the Consultant shall provide the Project Representative with a written request identifying the proposed change. The written request shall include the following information:
 - a. Identity of the subconsultant and the work to be performed;
 - b. Resumes and documentation outlining the subconsultant's experience;
 - c. Labor costs and Overhead rate or Billing Rate information and supporting documentation; and
 - d. If the subconsultant is to perform work of the consultant or another subconsultant already identified in Exhibit B, an explanation of why the work is going to be transferred to a new subconsultant.
 3. County Approval of Subconsultants. The County has sole discretion in approving or rejecting proposed subconsultants. Before any subconsultant not already identified in the Contract can perform any work under this Contract, the County shall provide written authorization to the Consultant. Authorization shall not be unreasonably withheld. Such written authorization shall be followed up with an amendment to the Contract.
 4. Substitution of Personnel. The Consultant recognizes and agrees that if a change is made substituting or changing assigned personnel, the Consultant shall be responsible for any and all costs associated with "Transfer of Knowledge and Information". The Transfer of Knowledge and Information shall be defined to include the labor hours spent reviewing project documentation, participating in meetings with Project personnel, and participating in site visits to familiarize oneself with the Project and project location(s). The County shall not pay for any time spent for the "Transfer of Knowledge and Information".

- a. The Consultant shall provide sufficient advance notice of any intention to remove or reassign personnel.
 - (1) For individuals who are not identified as "Key Personnel" in Exhibit F, the Consultant does not need to provide advance notice to the Project Representative, provided however, the substituted individual's labor rate was approved in the contract, Exhibit B. If the labor rate was not approved in Exhibit B, then the Consultant shall provide documentation supporting the labor rate for the substituted personnel prior to submitting an invoice and the labor rate shall not significantly differ from the originally assigned personnel. **The County shall not pay for work associated with the substituted personnel until after verification and acceptance of the Labor Rate.**
 - (2) Exhibit F, Key Personnel, is a listing of individuals. Notice for the substitution of individuals and positions identified as Key Personnel shall include the following:
 - (a) An explanation of the reason for the reassignment or removal;
 - (b) The name of the person proposed to replace the individual;
 - (c) Identification of the experience and qualifications of the individual proposed;
 - (d) A plan and schedule showing how the Transfer of Knowledge and Information between the departing and incoming individual will occur; and
 - (e) Proposed allocation of hours associated with the entire Transfer of Knowledge and Information.
- b. The Consultant shall not remove or reassign **Key Personnel** without written consent from the County.
- c. The Consultant shall provide a certification with its invoice certifying that the time associated with the "Transfer of Knowledge and Information" is not billed to the County and is not a cost borne by the County.
- 5. County Request Removal Personnel. The Consultant shall remove from the Project any personnel or subconsultant if, after the matter has been thoroughly considered by the County and the Consultant, the County considers such removal necessary and in the best interests of the Project and so advises the Consultant in writing.

SECTION 3. SCOPE OF WORK

- A. The County hereby retains the Consultant upon the terms and conditions contained herein to perform certain work and services on the Project. The work and services for the Project to be performed by the Consultant are set forth in Exhibit A, Scope of Work, attached hereto, and incorporated herein by this reference. The general Project Schedule is set forth in Exhibit C, attached hereto and incorporated herein by reference.
- B. The County may make available to the Consultant, without cost, copies of as-built plans, drawings, survey notes, studies, soil reports, maintenance and performance records, and other relevant data, and property descriptions of various County facilities related to the Project, which are readily available, and on file at the County. These documents are available solely as additional information to the Consultant and do not relieve the Consultant of its duties and obligations under this Agreement nor constitute any representation or warranty by the County as to conditions or other matters related to the

Project. The Consultant may reasonably rely on the data contained in such documentation; however, the Consultant is responsible to perform a review of the data within thirty (30) calendar days of receipt of the data and notify the County immediately in writing of any perceived inaccuracies or discrepancies with the data. If, at a later time, the Consultant discovers any defects with the data, the Consultant shall immediately and in writing inform the County of such defects.

- C. It shall be the responsibility of the Consultant to gather and become familiar with all site information including existing improvements.

SECTION 4. CHANGES IN WORK

- A. Any direction from the County to perform work that results in an increase or decrease in scope, changes to the Total Price or Period of Performance, or changes impacting the Fixed Professional Fee shall be made only by an amendment prior to the work being performed. The Department Director or its designee is the only authorized County representative who may sign amendments.
- B. In the event the Consultant identifies something that may impact the scope of work, Project Schedule and/or cost, ConsultantName shall inform the Project Representative within five (5) business days of the event and possible impacts to scope, schedule and cost. If appropriate, the parties shall execute an amendment.
- C. The Project Representative may, at any time, by written or oral directive require the Consultant to perform work consistent with the Contract's Scope of Work (Exhibit A); provided that this directive does not add scope or cost to the Project. If the Project Representative gives the Consultant an oral directive, the Consultant shall document the oral directive and provide the Project Representative with a copy of the documented oral directive within five (5) calendar days of the directive. A written or oral directive to the Consultant from anyone other than the Project Representative is not binding on the County. The Project Representative may adjust the task budgets in the Cost Summary (Exhibit B) provided that the Total Price, Period of Performance, and/or the Fixed Professional Fee are not impacted or affected by the adjustment to the task budget. Adjustments to task budgets must be authorized in writing by the Project Representative prior to the work being performed and such authorization must specifically identify the task budgets impacted and the specific scope of work to be performed. Adjustments to task budgets are only authorized when the money is taken from a task budget where the work is complete and there is money remaining in the task budget. Any directive and any adjustment in the task budgets shall not constitute a change or entitle the Consultant to additional compensation or a time adjustment.
 - 1. If the Consultant believes work identified in the directive and/or adjustment to a task budget is not within the Scope of Work (Exhibit A) and/or causes an increase or decrease in cost or time required for performance of any services under this Agreement, ConsultantName shall immediately, on behalf of itself or its subconsultants, and prior to performing any work, request in writing an equitable cost and/or time adjustment. Any request for an equitable cost and/or time adjustment shall be submitted to the Project Representative.
 - a. The Consultant shall not perform the work identified in the directive and/or adjustment to the task budget until the County and Consultant execute an amendment pursuant to this Section or the County issues a written letter denying the Consultant's request for an equitable cost and/or time adjustment.

- b. After receiving the County's denial letter, even if the Consultant disagrees with the County's decision, the Consultant shall perform the work as indicated in the directive and/or task budget adjustment. If the Consultant disagrees with the County's denial, ConsultantName shall notify the Project Representative of its disagreement and the reasons for its disagreement within ten (10) calendar days of receipt of the County's denial letter and the Consultant shall submit in accordance with Section 19 a claim for equitable adjustment in writing to the Department Director's designee within thirty (30) calendar days from the date of receipt of the County's decision. The County shall identify the Department Director's designee for purposes of this paragraph and Section 19 in the County's denial letter. Failure to file a written claim for equitable adjustment shall constitute acceptance of the County's decision and shall waive the Consultant's right to additional compensation or a time extension.
- D. The County may, at any time, by written amendment direct the Consultant to make additions within the general scope of the services or work to be performed under this Agreement, delete portions of the Project, or revise portions of the work. Any changes within the general scope of work, which result in an increase or decrease in time of performance or cost, shall only be made by amendment. An amendment executed by the County and ConsultantName represents full and final agreement and resolution.

SECTION 5. RESPONSIBILITY OF THE CONSULTANT

A. Standard of Care

1. The Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings, specifications, reports and other services prepared or performed pursuant to this Agreement. The Consultant shall perform its work to conform to generally accepted professional standards applicable to the types of services and work provided hereunder. The Consultant shall be responsible for the professional standards, performance and actions of all persons and firms performing work pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such plans, designs, drawings, specifications, reports and other services.
2. The County's approval of plans, drawings, designs, specifications, reports and other products of the professional services rendered hereunder shall not in any way relieve the Consultant of responsibility for the technical adequacy or accuracy thereof. Neither the County's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The County shall make a good faith effort to review materials in an expeditious manner; provided however that the County shall have a minimum of thirty (30) calendar days to review and provide comments on plans, drawings, specifications, reports or other products. The County typically completes its review within forty-five (45) calendar days.
3. Should the Consultant produce and maintain a document criticizing, challenging, or disagreeing with any decisions by the County concerning design and/or management of the Project, the design, and/or any findings or final conclusions, the Consultant shall (a) first discuss the matter with the County and try to reach resolution and (b) provide the County with a copy of the document within five (5)

calendar days of producing the document. Any such document shall identify reasonable and realistic solutions.

4. The Consultant shall be knowledgeable and familiar with the County's Construction General Conditions and any County provided Division 0 and technical specifications (Division 1). Any technical specifications drafted by the Consultant shall be consistent with these Divisions and such technical specifications should not create any ambiguity or conflict with these Divisions.
5. The Consultant shall not assign, sublet, mortgage, pledge as collateral, substitute for obligation, or otherwise encumber any rights, duties or interests accruing from this Agreement, other than accounts receivable, without the prior written consent of the County. Unless otherwise stated in the written consent to the assignment, sublet, mortgage, pledge or encumbrance, no such consent shall release the Consultant from any obligation under this Agreement.

B. Maintenance of Project Documentation

1. Document Retention Policy. The Consultant shall establish a Document Retention Policy consistent with Washington state law, King County Code, and the following requirements:
 - a. The Consultant shall comply with the Document Retention Policy.
 - b. The Document Retention Policy shall define Official Project Documentation and require that Official Project Documentation and other appropriate documentation be maintained in the Project file.
 - c. Draft reports, specifications and drawings are not considered valid Official Project Documentation as they have been replaced and/or superseded by the final report, specifications, and drawings. The Document Retention Policy should address how draft reports, specifications and drawings are maintained in the Project file.
 - d. The Consultant shall maintain documents on software format (and version) approved by the County.
 - e. The Consultant shall review its email to determine whether the email is considered Official Project Documentation or other appropriate documentation to be maintained in the Project file. Any email not considered Official Project Documentation or appropriate documentation for the Project file shall be deleted and not maintained in the Project file.
 - f. The County shall review and approve the Document Retention Policy.
 - g. The Project file shall be available for review by the County or an authorized representative at any time.
2. Upon written request by the Project Representative, the Consultant shall provide the County with access to all documents and correspondence, including e-mail communications, memoranda, and all other written materials prepared or used in performance of work on this Project.
3. The Consultant is cautioned that information and documentation submitted to the County may become a public record in accordance with the Revised Code of Washington and may not be exempt from disclosure under the Washington State Public Disclosure Act.

- a. Consultant shall mark all pages of Consultant's financial or personnel information that it considers proprietary or confidential. In the event the County receives a public disclosure request for such documentation, the County will advise the Consultant and will not release the marked documents for a period of not less than ten (10) calendar days in order to give the Consultant an opportunity to obtain a court order prohibiting the release of the information in response to the public disclosure request. The County cannot insure that the Consultant's confidential or proprietary information would not be subject to release pursuant to a public disclosure request.

C. Duty of Confidentiality.

1. The Consultant acknowledges that unauthorized disclosure of information or documentation concerning this Project may cause substantial economic loss or harm to the County. Except as otherwise required by Court Order or subpoena, the Consultant shall not without prior written authorization by the Project Representative:
 - a. Allow the release, dissemination, distribution, sharing, or otherwise publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Agreement;
 - b. Allow the release, dissemination, distribution, sharing, or otherwise publication or disclosure of information or documentation which relates to the technical or business activities of the County obtained, discovered, shared or produced pursuant to this Agreement; and/or
 - c. Disclose to any third party any calculations, notes, reports, drawings, electronic files, including any and all emails, or any other materials, information or documentation developed or obtained during the course of any performance of this Agreement.
2. The Consultant may disclose information and documentation to its employees who have a substantial need to know the specific information in question in connection with the Consultant's exercise of rights or performance of obligations under this Contract. The Consultant shall inform its subconsultants, employees, and representatives of their obligations under this Agreement and instruct them so as to ensure such obligations are met. If so requested by the Project Representative, the Consultant further agrees to require its subconsultants and individuals performing services pursuant to this Agreement to execute a Confidentiality Agreement.
3. The Consultant shall not release any information or documentation concerning the work under this Contract or any part thereof in the form of advertising, marketing activities or publication including news releases or professional articles, without the prior written approval of the Project Representative. Any and all news releases, professional articles, advertising, publicity, or other marketing activities, which describes or discusses the Project shall have been reviewed and approved by the Project Representative prior to publication, disclosure and/or distribution. The Consultant may submit for review and approval a generic Project Abstracts describing the component parts of the Project. After receiving written approval of the Project Abstract from the Project Representative, the Consultant may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.

- D. In the event of any breach or threatened breach by the Consultant or subconsultants of their Duty of Confidentiality and the Maintenance of Project Documentation, the County will have all rights and remedies that are available to it at law or equity.
- E. This Section shall survive for six (6) years after the termination or expiration of this Contract.
- F. ConsultantName shall ensure that the paragraphs in Section 5, Responsibility of the Consultant, are included in each subconsultant's contract for work on the Project.

SECTION 6. DELIVERABLES

- A. In the performance of this Agreement, the Consultant shall, to the extent practicable, design and draft specifications that provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods and processes.
- B. The Consultant shall not, in the performance of the work under this Agreement, produce a design or specification which would require the use of structures, machines, products, materials, construction methods, equipment, or processes which the Consultant knows to be available only from a single source, unless the Consultant has provided a written justification for the use of a single source in writing and the County concurs.
- C. The Consultant shall not, in the performance of the work under this Agreement, produce a design or specification which would be restrictive or written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment. The Consultant shall report to the County any single source or restrictive design or specification giving the reason(s) why, in the Consultant's professional judgment, it is necessary to restrict the design or a particular specification. The Consultant shall substantiate in writing, and to the County's satisfaction, the basis for the single source or restrictive design or specification.
- D. When one or more brand names or trade names of comparable quality or utility are listed, the words "or approved equal" shall follow the brand name(s) and the salient characteristics shall be identified.

THE FOLLOWING PARAGRAPH IS AN ALTERNATE - ONLY USE FOR WTD CONTRACTS

- E. Exhibit G, Wastewater Treatment Division (WTD) Design Deliverables, is attached hereto and incorporated herein by reference.

SECTION 7. COMMENCEMENT AND MONTHLY REPORTS

- A. Notice to Proceed. After execution of this Agreement by the County and the Consultant, the County will issue a written notice to proceed on the Project or specific tasks thereof. Such notices to proceed will be provided for specific tasks identified as necessary to produce specified work products and shall set forth the date of commencement of the work, a description of the work to be performed, the schedule for the work authorized, and the budgets for such tasks. Upon receipt of a notice to proceed, the Consultant shall promptly commence work. Upon the satisfactory completion of Project work, the County will evaluate such work.

- B. Monthly Reports. Unless otherwise stated in the Scope of Work, not later than the 10th day of each calendar month during the performance of the Project, the Consultant shall submit to the Project Representative, a monthly report, in a format approved by the Project Representative, sufficient to show the activities completed and the Project progress as measured against the Project Schedule and Exhibit B, Cost Summary. At a minimum the monthly report shall identify costs incurred, budget status (budget vs. estimated balance to complete), amendments, project schedule, any variance between planned vs. actual project performance, all issues that may result in completion of any task beyond the established schedule or task budget, and all issues that may result in an increase in Total Price.

SECTION 8. COMPENSATION

- A. Subject to the provisions set forth in this Agreement, the County will pay the ConsultantName on a monthly basis for authorized and satisfactorily completed work and services rendered under this Agreement. Progress payments shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case shall the total progress payment exceed the Total Price as defined herein. The amount to be paid to the Consultant shall be computed as hereinafter set forth; provided, that such payment shall not exceed a maximum amount of **@ DOLLARS (@)** ("Total Price"). In the event the Consultant incurs costs in excess of the Total Price the Consultant shall pay such excess from its own funds and the County shall not be required to pay any part of such excess and the Consultant shall have no claim against the County on account thereof.
- B. Compensation for work and services shall be on a cost plus fixed fee basis but not to exceed the Total Price. Compensation and the Total Price shall be the sum of Direct Labor Costs, Indirect Costs, Other Direct Costs and a Fixed Professional Fee, as described and defined below. Costs to be paid are identified on the Cost Summary, which is attached hereto as Exhibit B and incorporated herein by this reference, and comprise the following:
1. **Direct Labor Costs.** Direct Labor Costs shall be the total number of allowable hours worked on the Project by each individual multiplied by the Labor Rate identified in the Cost Summary (Exhibit B) for such individual.
 - a. A Labor Rate shall not exceed \$65.00 per hour, except in exceptional and rare circumstances when the County, in its sole discretion, agrees to pay over \$65.00 per hour.
 - b. The County shall only pay the Labor Rate and shall not pay any premium associated with overtime.
 - c. The parties agree to the Labor Rates as set forth in Exhibit B so long as the Labor Rate is not greater than the actual Labor Rate paid to the individuals, which rates shall be used during the entire term of this Agreement, including all amendments; provided however, Labor Rates may be subject to reasonable adjustments but only in accordance with paragraph D below.
 2. **Indirect Costs.** Indirect Costs shall be calculated as follows:
 - a. Indirect Costs shall be the Overhead Rate identified in the Cost Summary (Exhibit B) multiplied by the Direct Labor Rates for every allowable hour worked on the Project and billed by the individual.

DELETE THE SECTION IN PINK IF IT DOES NOT APPLY

- (1) The County may pay an Associated Project Cost (APC) in addition to the Overhead Rate if, after reviewing sufficient auditable information, the County determines that costs included in the APC rate are clearly not included in the overhead rate. APC includes but is not limited to all allowable costs associated with telephones, communication equipment, computers, software, computer support, information technology support, telecommunication, facsimiles, printers, copiers, cell phones, reproduction and duplication equipment and costs, and other miscellaneous company owned equipment and other miscellaneous related office costs. The approved APC rate shall be not be increased during the Period of Performance, including all amendments.
- (2) Profit, fee and any other type of mark-up are specifically prohibited on APC.
- (3) The County has only authorized @ (Insert Firms' Legal Name) to receive an APC. All other firms shall not be paid an APC.

CHOOSE APPLICABLE PROVISION

TYPE A:

- (a) @ NAME FIRM APC is \$@, which rate shall be paid for allowable hours performed and invoiced by @.

TYPE B:

- (a) @ NAME FIRM APC is \$@, which rate shall be paid on 25% of the total allowable hours performed and invoiced by @.

TYPE C:

- (a) @ NAME FIRM APC is \$@ for computer engineering work, which rate shall be paid for allowable hours performed and invoiced by @, except for hours spent on CADD or by CADD personnel.
- (b) @ NAME FIRM APC is \$@ for CADD work, which rate shall be paid for allowable hours performed and invoiced by @ for CADD personnel only.
- (c) These two rates cannot be combined on any individual.

TYPE D:

- (a) @ NAME FIRM APC is \$@ for computer engineering work, which rate shall be paid on 25% of the total allowable hours performed and invoiced by @, except for hours spent on CADD or by CADD personnel.
- (b) @ NAME FIRM APC is \$@ for CADD work, which rate shall be paid on 25% of the total allowable hours performed and invoiced by @ for CADD personnel only.
- (c) These two rates cannot be combined on any individual.

- b. The Consultant agrees to the Overhead Rates as set forth in Exhibit B, which rates shall be used during the term of this Agreement, including all amendments;

provided however, said Overhead Rates may be adjusted but only in accordance with paragraph D below.

3. **Other Direct Costs.** Other Direct Costs ("ODC") are those costs which can be specifically identified with the Contract objectives, are required for performance of the Contract, are approved in advance in writing by the Project Representative, and are actually incurred. ODC shall be billed at cost, without markup. Invoiced ODC are those ODC where the Consultant will have a receipt from an independent company for goods or services and include Subcontract Costs and Travel Costs. All other ODC are unallowed costs.
 - a. Subcontract Labor Costs. Authorized subcontract services (which includes services provided by subconsultants) shall be compensated through (i) Labor Rate, Overhead & Indirect Costs, and Fee, specifically authorized by the County and identified in the Cost Summary, Exhibit B or (ii) Billing Rate specifically authorized by the County and identified in the Cost Summary, Exhibit B. Any labor cost, overhead and/or **billing rate** that is not utilized and billed by the subconsultant shall not be reimbursed to the Consultant or subconsultant.
 - (1) Labor Rates. Labor Rates for the subconsultants are identified for each individual in the Cost Summary, Exhibit B. The County shall only pay the Labor Rate and shall not pay any premium associated with overtime. The parties agree the Labor Rates identified in Exhibit B, Cost Summary, shall be used during the entire term of this Agreement, including all amendments; provided however, Labor Rates may be subject to reasonable adjustments but only in accordance with paragraph D below. A Labor Rate shall not exceed \$65.00 per hour, except in limited exceptional circumstances when the County, in its sole discretion, agrees to pay over \$65.00 per hour.
 - (2) Overhead & Indirect Costs. The Consultant and its subconsultants agree to the Overhead Rates as set forth in Exhibit B, which rates shall be used during the term of this Agreement, including all amendments; provided however, the Overhead Rates may be adjusted but only in accordance with paragraph D below. Indirect Costs shall be the Overhead Rate identified in the Cost Summary, Exhibit B, multiplied by the Direct Labor Rates.
 - (3) **Fixed Professional Fee. The Fixed Professional Fee is established in Exhibit B and shall be managed and paid out in the same manner as the provisions dealing with Fixed Professional Fee (Profit) defined later in this Section.**
 - (4) Billing Rate. Billing Rate(s) for the subconsultants are identified for each individual working on the Project in the Cost Summary, Exhibit B. Billing Rate costs shall be the total number of allowable hours worked on the Project by each employee multiplied by the Billing Rate for such employee. Billing Rates include all costs associated with labor, overhead and fee. The County shall only pay the Billing Rate and shall not pay any additional compensation for overtime, nor shall the County pay premium rates. The parties agree the Billing Rates identified in Exhibit B, Cost Summary, shall be used during the entire term of this Agreement, including all amendments; provided however, Billing Rates may be subject to reasonable adjustments at the sole discretion of the County
 - b. Travel Costs. The Consultant shall only be reimbursed for travel costs while in approved Travel Status. Travel Status shall be limited to out-of-town experts who will be brought to Washington or individuals who reside in Washington and

are sent out-of-town for a limited duration. Reimbursement of travel costs, including transportation, lodging, meals and incidental expenses incurred while in a Travel Status in connection with Project work is limited as follows:

- (1) That local travel while on Travel Status shall be by bus, taxi or compact rental car;
- (2) That reimbursement for meals inclusive of tips shall not exceed the limits identified in King County Code 3.24.080;
- (3) That accommodation shall be at a reasonably priced hotel/motel and shall not exceed the Federal maximum lodging rate limit established by the Federal government for the appropriate locality (41 CFR 301 Appendix A); and
- (4) That air travel shall be by coach class at lowest available commercial price taking into consideration the costs of transportation, other travel expenses, and salary.

- c. Reproduction, Copying, and Printing Costs. Reproduction, copying, or printing services are allowable provided the costs are reasonable and (1) services are performed by an independent copy or reproduction company or (2) reproduction, copies and printing services performed in-house on paper greater than 11" by 17" and the County has determined that these costs are not included in the overhead. Reproduction, copying, and printing services include but is not limited to duplication of documents, Xerox copies, Merlin plotter, or documents printed on printer, plotter, copier, or similar office equipment, information printed on vellum, Mylar, transparencies; and documents copied, printed, or reproduced in any manner in black and white and/or color. If a firm has an Associated Project Cost (APC), that firm is not reimbursed for reproduction, copying and printing costs as an ODC. Exhibit B identifies the allowable costs associated with reproduction, copying, and printing services performed in-house.
 - d. Courier Services and Delivery Services. Courier and delivery services are allowable costs if the County has determined that the costs are not included in overhead provided the costs are reasonable. Exhibit B identifies the allowable costs associated with courier services, mail and delivery services.
 - e. Mileage, Parking, and Related Costs for Local Travel. Local Travel is considered travel within the State of Washington. The costs associated with Local Travel, i.e., mileage, is allowable if the County has determined that the costs are not included in overhead and such costs are reasonable. Exhibit B identifies the allowable costs associated with mileage; parking and related Local Travel costs.
4. **Fixed Professional Fee (Profit).** The County shall pay a Fixed Professional Fee, which amount shall not exceed a maximum total sum of @ DOLLARS (@).
- a. The Consultant acknowledges and agrees that the Fixed Professional Fee is a fixed amount, which cannot be exceeded because of any differences between the Total Price and actual costs of performing the work required by this Agreement.
 - b. The Consultant acknowledges and agrees that the Fixed Professional Fee is only due and payable for Project work for which the County has given notice to proceed and which the Consultant has satisfactorily completed. The Fixed Professional Fee will not be paid for any tasks in the Scope of Work and Cost Summary that the Project Representative does not authorize the Consultant to

perform. The County is entitled to a deductive amendment for those unperformed tasks.

- c. The Consultant acknowledges and agrees that the amount of the Fixed Professional Fee may be adjusted by the County to:
 - (1) Reduce the Fixed Professional Fee associated with Scope of Work that was not authorized or performed by the Consultant;
 - (2) Reduce the Fixed Professional Fee associated with deletions in the Scope of Work;
 - (3) Increase the Fixed Professional Fee for additional work included in the Scope of Work through an amendment.
 - d. The Fixed Professional Fee shall be paid as follows:
 - (1) The Fixed Professional Fee will be paid monthly in proportion to the Project work satisfactorily completed. The portion of work completed shall be determined by the earned value of the deliverables satisfactorily completed **and not invoiced costs**.
 - (2) A payment for an individual month shall include that portion of the Fixed Professional Fee allocable to the Project work satisfactorily completed during said month and not previously paid; and
 - (3) Any portion of the Fixed Professional Fee not previously paid in the monthly payments shall be included in the final payment provided that the Consultant satisfactorily completed the entire scope of work subject to the limitations set forth above.
- C. Unallowable Costs. The County shall not pay for any costs or direct charges associated with or relating to the following activities:
- 1. Any resubmission, changes to or adjustments in the invoices, and fixing improper invoices and the preparation and submission of monthly invoices if this cost is not included in the Consultant's overhead.
 - 2. Preparation of, discussion and/or negotiation of a request for:
 - a. Adjustments in any Labor Rate, Overhead Rate and/or Labor Escalation percentage; and
 - b. Travel Status.
 - 3. Preparation for and negotiation of changes to scope of work, including but not limited to request for change, proposal preparation, drafting scope of work, level of effort, and cost summary, and negotiation of scope of work or related level of effort/cost summary, etc.
 - 4. Changing or reassigning personnel or subconsultants, including but not limited to preparing requests concerning Transfer of Knowledge for Key Personnel.
 - 5. Preparation of any documentation related to, discussion of, or negotiation of equitable adjustment, disputes, claims or Section 19, Disputes and Remedies.
 - 6. Compliance with Section 5C, Duty of Confidentiality.
 - 7. Providing the County or its designee(s) with access to Project documentation and the Project file.

8. Relocation costs.
9. Meals, except when in Travel Status.
10. Compliance with Section 13, Audit and Access to Records.
11. Except for what costs are covered in the approved Overhead Rate or approved APC:
 - a. Office supplies, facsimiles, cell phones, communication equipment, and other miscellaneous company owned equipment;
 - b. Facsimiles;
 - c. Long Distance.
12. Computers, software, computer support, information technology support.
13. Except as negotiated in the Lump Sum Other Direct Costs, Photocopies, Xerox copies, or documents printed on a printer, copier, or similar office equipment provided (a) the paper used was no larger than an 11" by 17" piece of paper; and (b) the document was not sent to an independent copy service for duplication.
14. Safety equipment and training.

D. Limitations on Changes to Overhead Rates and Labor Rates.

1. Any changes to the Overhead Rates and Labor Rates shall have no impact on the Total Price.
2. Overhead Rates.
 - a. The Overhead Rates are identified in the Costs Summary, Exhibit B.
 - b. The County will review Overhead Rates annually. Overhead Rates may be increased or decreased, at the sole discretion of the County, based on the County's review of audited Overhead Rate(s). In no event shall the County pay more than the federally approved overhead rate for the year in which the expenditures are applicable.
 - c. The Consultant is obligated to provide the County with all supporting documentation of all Overhead Rate(s), including but not limited to annual audited overhead rates, any actual or provisional federal (FAR) overhead rates, any rates less than the FAR audited rate, and additional information as requested. The Consultant shall provide accounting data based on historical costs over the preceding fiscal year.
 - d. The Consultant is obligated to provide in a timely manner all information concerning the federal overhead rate, including but not limited to any decrease in the federal overhead rate.
 - e. Any adjustment to an Overhead Rate shall not exceed 5 percentage points over the Overhead Rate identified in the Cost Summary, Exhibit B. To illustrate, if the Overhead Rate for subconsultant A, as identified in the Cost Summary, Exhibit B, is 160%, then the Overhead Rate for subconsultant A can not, in any given year of this Agreement including all amendments, exceed 165%.
 - f. When the County reviews requests to adjust Overhead Rates, the County will review and consider the actual historical overhead costs incurred by the firm with respect to Business & Occupational taxes; however, should the B&O tax percentage be increased or decreased, the County will make no adjustment to

the Overhead Rate to account for future B&O taxes associated with costs for this Project.

3. Labor Rates

- a. The Consultant agrees that all Labor Rates identified in this Agreement (Exhibit B) shall be effective for the entire Contract duration, including all amendments; provided however, Labor Rates may be increased at the sole discretion of the County on an annual basis.
- b. Labor Rates shall not be modified prior to @ MONTH< DAY< YEAR. After @ MONTH< DAY< YEAR, any increase in Labor Rates shall be effective for a minimum period of at least 365 calendar days and shall be subject to the limits set forth herein.
 - (1) A Labor Rate shall not exceed \$65.00 per hour except in exceptional and rare circumstances when the County, in its sole discretion, agrees to a Labor Rate over \$65.00.
 - (2) Labor Rate increases must be based on actual and verifiable increases in labor costs.
 - (3) Labor Rates in excess of \$65.00 shall not be subject to escalation.
 - (4) Project Labor Escalation. For purposes of establishing the Total Price, the parties assume a @% (Number shall not exceed 5) escalation on Labor Costs starting @ MONTH< DATE< YEAR. The Consultant understands and agrees that it is not entitled to receive a @% escalation on Labor Costs; rather, the County will approve reasonable Labor Rate increases and such increases shall not exceed @%. Any funds that are not used for the project labor escalation shall not be paid to the Consultant.
 - (5) Individual Labor Rate Limitation.
 - (a) The County will not approve a Labor Rate increase for any individual employee in excess of 5% per year; provided however, in rare and special circumstances the County may approve an increase for an individual over the 5% limitation.

INCLUDE THE FOLLOWING PARAGRAPH ONLY IF PHASED CONTRACT

- (b) During negotiations for Phase @, the Consultant may request an increase in the @% (not to exceed 5%) limit on individual Labor Rate increases and the County will consider and may negotiate an increase provided that the Consultant has submitted a compelling justification for the increase. In the event the County and Consultant cannot reach agreement, the 5% limit on individual Labor Rate increases remains in effect for Phase @. In the event the parties agree on an individual Labor Rate limitation in excess of the @% (not to exceed 5%) limitation, the County will not approve a Labor Rate increase for any individual employee in excess of Phase @ percentage limitation.
- c. Should the Consultant seek an adjustment in Labor Rate(s), ConsultantName must notify the County in writing of its request to modify the existing labor rate. ConsultantName shall submit only one request per year that must include all

individual rate increase requests and all overhead requests. This request shall include the following information for each rate increase:

- (1) The amount of the increase in the rate;
 - (2) If the increase for a Labor Rate is in excess of @% (not to exceed 5%), a justification for the reason the increase should exceed the @% (not to exceed 5%) limitation;
 - (3) Accounting information demonstrating that the rate increase is tied directly to (a) employee compensation increase or (b) increase or decrease in overhead rate;
 - (4) Accounting information demonstrating that the rate increase is tied directly to employee compensation increase.
4. Approval of Increases by County. Adjustments in Labor Rates or Overhead Rate, and the amount of any rate increase require the approval of the Project Representative. The Consultant shall provide additional information as requested by the County. The County shall review the Consultant's request for a rate increase and respond in writing to the request within sixty (60) calendar days of receipt of such request. If the County does not issue a written decision within sixty (60) calendar days of the request, the request is deemed denied. The County may choose to negotiate a lower rate increase; however, by agreeing to negotiate the County is not obligated to grant any rate increase. Any rate increase is at the sole discretion of the County.
 5. Reimbursement for Overpayment. The County or County's designee may audit the Consultant's books, records, and other supporting data relevant to the labor and overhead rate, including but not limited to other Contract rates, terms and conditions in order to evaluate and negotiate any rate increases or decreases.
 - a. Should the County determine that the Labor Rate charged to the County is greater than the Labor Rate paid to the employee, the County shall be entitled to a refund of the difference between the actual rate paid to the employee and the rate paid by the County.
 - b. Should the County determine that the Overhead Rate charged to the County is not consistent with the federal overhead rates, the County shall be entitled to a refund of the difference between the rate paid by the County and the federal overhead rate.
 6. Effective Period.
 - a. Any change to the Labor Rate shall not be effective until the date the Project Representative approves, in writing, the increase. Changes to Labor Rates shall not be retroactive. Only services performed after the date the Project Representative approves the rate increase shall be billed at the new Labor Rate. The written approval is considered a part of the Contract documents and shall be incorporated into the Contract in the next amendment.
 - b. Increases in the Overhead Rate shall not be effective until the date the Project Representative approves, in writing, the increase. The written approval is considered a part of the Contract documents and shall be incorporated into the Contract in the next amendment.

- c. If the federal overhead rate decreases, it is effective with the firm's accounting period and the County has the right to a reimbursement for the affected periods. The written notice decreasing the Overhead Rate is considered a part of the Contract documents and shall be incorporated into the Contract in the next amendment.
- E. Invoice Process. Unless otherwise stated in the Scope of Work not later than the 10th day of each calendar month, the Consultant shall submit to the Project Representative an invoice for payment for Project work completed to the end of the previous month. Such invoices shall be for work performed subsequent to that work covered by all previously submitted invoices and shall be computed pursuant to the rates and limitations set forth hereinabove.
 - 1. Invoices shall detail the work by task, hours and employee name and level for which payment is being requested; include copies of all invoices from authorized subconsultants for which payment is being requested; and shall itemize, and include copies of, receipts and invoices for the Other Direct Costs for which reimbursement is being requested. Receipts are not needed for reimbursement of the following costs provided they are allowable: meals, mileage, parking, courier services, mail, delivery services; provided however, the Consultant shall maintain receipts (except for meals) and all documentation supporting these charges and the County has the right to audit to verify accuracy of the invoices.
 - 2. At no time shall the total cumulative amounts paid for Project work exceed the total which would be due upon the completion of all Project work multiplied by the percentage of the required work satisfactorily completed, as determined by the County.
 - 3. Within forty-five (45) calendar days of receipt of an invoice and upon approval of the work satisfactorily completed and amount billed, the County will pay the amount of the invoice so approved.
 - 4. In the event of a disputed invoice, the County shall pay the undisputed amounts and withhold from payment the disputed portion of the invoice.-
- F. Prompt Payment of Subconsultants. Within ten (10) business days of receipt of a progress payment from the County that includes dollars for work performed by subconsultants, ConsultantName shall pay such subconsultants out of such amounts as are paid by the County, for all work satisfactorily completed by the subconsultant. If ConsultantName fails or neglects to make such payment within ten (10) business days, ConsultantName shall pay to the subconsultant an interest penalty computed at one percent per month on amounts due for the period beginning on the day after the required payment date and ending on the day on which payment of the amount is due. ConsultantName shall ensure that this paragraph is included in all subconsultant contracts for work on this Project.
- G. Final Payment. Final payment of any balance earned by and payment to the Consultant for Project work will be made within sixty (60) calendar days after all of the following:
 - 1. Satisfactory completion of all work required by this Agreement;
 - 2. Receipt by the County of the plans, studies, surveys, photographs, maps, calculations, notes, reports and all other documents and/or deliverables which are required to be prepared and submitted by the Consultant under this Agreement;

3. Delivery of all equipment/materials purchased specifically for the Project where the County has reimbursed the Consultants for such costs;
 4. Receipt by the County of a fully executed final statement of amounts invoiced by and paid to each subconsultant under this Agreement;
 5. Conclusion of an audit and verification of costs and performance as the County may deem necessary; and,
 6. Execution and delivery by the Consultant of a release of all claims against the County arising under or by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by the Consultant from the operation of the release in stated amounts to be set forth therein.
- H. No payment, whether monthly or final, to the Consultant for any Project work shall constitute a waiver or release by the County of any claims, right or remedy it may have against the Consultant under this Agreement or by law; nor shall such payment constitute a waiver, remission or discharge by the County of any failure or fault of the Consultant to satisfactorily perform the Project work as required under this Agreement.

SECTION 9. TERMINATION OF AGREEMENT

A. Cure Notice.

1. If the County determines that a breach of Contract has occurred, that is, the Consultant has failed to comply with any material terms or conditions of this Contract or the Consultant has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure will apply:
 - a. The County will provide the Consultant with a Cure notice; thereby notifying the Consultant in writing of the nature of the breach;
 - b. Unless a longer period is provided by the County, The Consultant shall respond in writing within three (3) business days of its receipt of such notification, which response shall include a corrective action plan indicating the steps to be taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance within the number of calendar days specified by the County;
 - c. The County will notify the Consultant in writing of the County's determination as to the sufficiency of the Consultant's corrective action plan. The determination of sufficiency of the Consultant's corrective action plan shall be at the sole discretion of the County;
 - d. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, or the Consultant's corrective action plan is determined by the County to be insufficient, the County may commence termination of this Contract in whole or in part;
 - e. The County may withhold any payment owed the Consultant and/or instruct the Consultant to refrain from incurring additional costs until the County is satisfied that corrective action has been taken or completed;
 - f. No increase in Total Price, Period of Performance, or Fixed Professional Fee shall result from this provision; and

g. Nothing herein shall be deemed to affect or waive any other rights of the County.

B. Termination for Default

1. The County may terminate this Agreement, in whole or in part, in writing if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the County; provided that the Consultant has been given an opportunity to cure.
2. If the County terminates all or part of this Contract for default, the County shall determine the amount of work satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the County incurs because of the Consultant's default. In such event, the County shall consider the actual costs incurred by the Consultant in performing the Project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, whether that work is in a form or of a type which is usable and suitable to the County at the date of termination, the cost to the County of completing the work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the County of the Project work performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price set forth in this Agreement. This provision shall not preclude the County from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.
3. Upon receipt of a termination notice the Consultant shall at no additional cost to the County:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated; and
 - c. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the County all data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, Official Project Documentation and other Project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the Project where the County has paid the Consultant for such items.
4. Upon termination, the County may take over the work and prosecute the same to completion by agreement with another party or otherwise.
5. If, after termination for default, it is determined that the Consultant had not defaulted, the termination shall be deemed to have been effected for the convenience of the County. In such event, the equitable adjustment shall be determined as set forth below.

C. Termination for Lack of Appropriation

1. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the

Agreement will terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year. If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Agreement, or in any amendment hereto, the County may, upon written notice to the Consultant, terminate this Agreement in whole or in part. In accordance with King County Code 4.04.040, payment shall not exceed the appropriation for the year in which termination is effected.

2. If the Agreement is terminated for non-appropriation:
 - a. The County shall only be liable for payment in accordance with the terms of this Agreement for work satisfactorily completed prior to the effective date of termination; and
 - b. The Consultant shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
3. Upon receipt of a termination notice the Consultant shall at no additional cost to the County:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated; and
 - c. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the County all data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, Official Project Documentation, other Project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the Project where the County has paid the Consultant for such items.
4. Upon termination, the County may take over the work and prosecute the same to completion by agreement.

D. Termination for Convenience.

1. The County may terminate this Agreement, in whole or in part, for the convenience of the County. The County shall terminate by delivery to the Consultant a Notice of Termination specifying the extent of the termination and the effective date.
2. If the County terminates this Contract for convenience, the County shall pay the Consultant only for the following items:
 - a. An amount for Direct Labor Costs and Indirect Costs in accordance with the Contract and Exhibit B for services satisfactorily performed to the date of termination;
 - b. The Fixed Professional Fee associated with work satisfactorily performed;
 - c. Actual and reasonable Other Direct Costs incurred before the termination; and
 - d. Actual and Reasonable termination settlement costs the Consultant reasonably incurs relating to commitments which had become firm before the termination, unless the County determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants and actual reasonable accounting and clerical costs related to preparing Termination Settlement Proposal.

3. Upon receipt of a termination notice the Consultant shall at no additional cost to the County:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated;
 - c. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the County all data, drawings, specifications, calculations, reports, estimates, summaries, Official Project Documentation, other Project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the Project where the County has reimbursed the Consultant for such costs;
 - d. Take any action necessary, or that the County may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the County has or may acquire an interest.
4. Within ninety (90) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the County a Termination Settlement Proposal. The Termination Settlement Proposal shall include:
 - a. Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination;
 - b. Actual and reasonable Other Direct Costs incurred before the termination;
 - c. Fixed Professional Fee associated only with work satisfactorily completed;
 - d. Reasonable termination settlement costs for terminating subconsultant contracts;
 - e. Actual reasonable costs related to accounting and clerical time spent preparing the Termination Settlement Proposal;
 - f. Documentation supporting the costs identified in the Termination Settlement Proposal; and
 - g. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the County is liable.
5. Termination settlement costs and proposals are subject to audit verification by the County.
6. Upon termination, the County may take over the work and prosecute the same to completion by agreement with another party or otherwise.
- E. If, because of death or unavailability, it becomes impossible for any Key Personnel employed by the Consultant in Project work or for any corporate officer of the Consultant to render services to the Project, the Consultant shall not be relieved of its obligations to complete performance under this Agreement without the concurrence and written approval of the County. If the County agrees to termination of this Agreement under this provision, payment shall be made as set forth in the Termination for Convenience provision.

SECTION 10. SUBCONTRACTS @ & ESSENTIAL PERSONNEL

A. SUBCONTRACTS

1. All subconsultants are subject to prior authorization by the County. Each subcontract shall be available for review and the cost summary subject to review by the Project Representative prior to the subconsultant proceeding with the work. The County hereby authorizes the Consultant to subcontract with the subconsultants listed in the Cost Summary, Exhibit B.
2. The Consultant shall submit monthly reports detailing all work completed by subconsultants during the preceding month and copies of all invoices relating thereto.

ESSENTIAL PERSONNEL PROVISIONS IS USED AT DISCRETION OF USER AGENCY

B. ESSENTIAL PERSONNEL

1. Consultant acknowledges that the experience and skill of the Essential Personnel was and continues to be an important factor in the County's selection of Consultant and the Consultant's team to perform the work. The names, titles and respective position of the individuals holding key positions ("Essential Personnel") for the Scope of Work for Phase 1 (Exhibit A) are identified as:
 - a. @ NAME< TITLE/POSITION < FIRM;
 - b. @ NAME< TITLE/POSITION < FIRM;
 - c. @ NAME< TITLE/POSITION < FIRM;

@If PHASE WORK INCLUDE: Should the County amend this Agreement to include Scope of Work for Phase @2, the County shall identify, in an amendment, additional Essential Personnel for Phase @2 and the Essential Personnel for Phase @2.

2. The Consultant Essential Personnel shall be permanently assigned to the Project so long as such Essential Personnel are employed and such Essential Personnel shall be subject to the No Reassignment provision below.
3. No Reassignment of Essential Personnel. ConsultantName agrees that it shall not remove or reassign, and shall not permit its subconsultants to remove or reassign Essential Personnel without:
 - a. Providing the County with thirty (30) calendar days advanced written notice identifying:
 - (1) Name of the Essential Personnel;
 - (2) An explanation of reassignment or removal;
 - (3) Name of the person proposed to replace the Essential Personnel and description of the experience and qualifications of the individual proposed to replace the departing Essential Personnel;
 - (4) A plan and schedule showing how the Transfer of Knowledge and Information between the departing and incoming individual will occur and allocation of hours associated with the entire Transfer of Knowledge and Information;
 - (5) Certification that the time associated with the "Transfer of Knowledge and Information" is not billed to the County and is not a cost borne by the County

(The Transfer of Knowledge and Information includes the labor hours spent reviewing project documentation, participating in meetings with personnel associated with the Project, and participating in site visits to familiarize oneself with the Project and project location(s)); and,

- (6) Identify adverse impacts to the Project as a result of the loss of the Essential Personnel and how these impacts will be minimized.
- b. Receiving written consent of the County. The County must agree to allocation of hours associated with the Transfer of Knowledge and may negotiate a reasonable and appropriate number of hours.
4. Any time that County's prior written consent is not obtained, Consultant agrees to pay the County a sum of \$@ DOLLARS (@) as Liquidated Damages, and not as a penalty, to compensate the County for inefficiencies associated with such change. Consultant agrees that the sum established as Liquidated Damages is fair and reasonable and that the payment represents a reasonable estimate of fair compensation for the inefficiencies that may be reasonably anticipated from the reassignment or removal of Essential Personnel. Liquidated Damages shall not be assessed if the reason an individual (identified as Essential Personnel) is no longer available to participate in this Project is beyond the reasonable control of the Consultant and/or applicable subconsultant.
5. Upon request by the Consultant, the County shall waive the liquidated damages if (a) the Consultant or subconsultant terminates a Essential Personnel; (b) the Essential Personnel is no longer working for or employed by the Consultant or subconsultant in any capacity; and (c) it is deemed by the County to be in the best interests of the Project for the Consultant or subconsultant to remove the Essential Personnel from the Project. The Consultant shall comply with paragraph 3 above.
6. The County shall not unreasonably withhold consent to remove Essential Personnel.

SECTION 11. NON-DISCRIMINATION, EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION

A. Nondiscrimination And Equal Employment Opportunity

1. Nondiscrimination in Employment and Provision of Services. During the performance of the Agreement, neither the Consultant nor any party subcontracting under the authority of the Agreement shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under the Agreement. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to the Agreement.
2. King County's Equal Benefits for Domestic Partners, Ordinance 14823. Ordinance 14823 prohibits the award of contracts valued at \$25,000.00 or more to firms that discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners. ConsultantName shall comply fully with the ordinance's provisions.
3. Nondiscrimination in Subcontracting Practices. During the solicitation, award and term of the Agreement, the Consultant shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts

and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subconsultants and suppliers, the Consultant shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

4. Compliance with Laws and Regulations. The Consultant shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI, VII of the Civil Rights Act of 1964 (P.L. 88-358), the Restoration Act of 1987, Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375, as supplemented in Department of Labor regulations (41 CFR Part 60), and all requirements of the U.S. Environmental Protection Agency (EPA) issued pursuant to that title, to the end that in accordance with Title VI of that Act, no person in the U.S. shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity which receives financial assistance from the EPA.
5. King County Code Chapters 12.16, 12.17 and 12.18 are incorporated by reference as if fully set forth herein and such requirements apply to the Agreement to the extent consistent with Washington State law.
6. The Consultant may, upon request and on such forms as may be provided by the County, furnish a report of the actions taken by the Consultant in implementing the terms of this section. The Consultant will permit access by the County and State to the Consultant's records of employment, employment advertisements, application forms, subconsulting practices, and other pertinent data and/or records related to this Project for the purpose of monitoring and investigation to determine compliance with these requirements.

B. Definitions Regarding Voluntary M/WBE Utilization

a. Minority Business Enterprise is a business concern:

- (1) Certified as socially and economically disadvantaged by the U.S. Small Business Administration ("SBA");
- (2) Certified as a minority business enterprise by the Washington State Office of Minority and Women's Business Enterprise ("OMWBE"); or,
- (3) An independent business concern meeting all the following requirements and which is 51% or more owned and controlled by minority group member(s);
- (4) A minority group member is an individual who is a citizen of the United States and in one of the following:
 - (a) Black American (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (b) Hispanic American (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
 - (c) American Indian or Alaskan Native (all persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community

identification including American Indian, Eskimo, Aleut, native Hawaiian);
or

- (d) Asian-Pacific Islander American (all persons having origins in any of the original people of the Far East, Southeast Asia, and the Indian subcontinent, or the Pacific Islands including Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian subcontinent).
 - (5) The minority ownership's interest must be real, substantial and continuing. Such interest is characterized by:
 - (a) Risk of loss/share of profit commensurate with the proportional ownership; and
 - (b) Receipt of the customary incidents of ownership, such as compensation (i.e., salary and other personnel compensation).
 - (6) A minority owner must have and exercise control over the business decisions. Characteristics of control include, but are not limited to: Authority to sign bids and contracts; Decisions in price negotiations; Incurring liabilities for the firm; Final staffing decisions; Policy-making; and General company management decisions.
- b. Women's Business Enterprise is a business concern:
- (1) Certified as socially and economically disadvantaged by the SBA;
 - (2) Certified as a women owned business enterprise by the OMWBE; or
 - (3) An independent business concern meeting all the following requirements and which is at least 51% owned and controlled by a woman or women, who is a citizen of the United States who operates and controls the business.
 - (a) The woman's ownership interest must be real, substantial and continuing. Such interest is characterized by risk of loss/share of profit commensurate with the proportional ownership; and receipt of the customary incidents of ownership, such as compensation (i.e., salary and other personnel compensation).
 - (b) A woman owner must have and exercise control over the business decisions. Characteristics of control include, but are not limited to: Authority to sign bids and contracts; Decisions in price negotiations; Incurring liabilities for the firm; Final staffing decisions; Policy-making; and General company management decisions.
 - (c) Determination of whether a business is at least 51% owned by a woman or otherwise qualified WBE which is 51 % owned by a married woman in a community property State will not be disqualified because her husband has a 50% interest in her share. Similarly, a business which is 51% owned by a married man will not become a qualified WBE by virtue of his wife's 50% interest in his share of the business.
- c. Minority and/or Women's Business Enterprise ("M/WBE"): For purposes of this Section, a M/WBE is a MBE or a WBE.

- d. Labor Surplus Area Business: A Labor Surplus Area business is a business located in a civil jurisdiction determined by the Bureau of Labor Statistics (Department of Labor) to have an average unemployment rate of 120% of the national average or 10% or higher, except that no area will qualify if the average unemployment rate is less than 6%.
- e. Small Business Enterprise: Is any business entity, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards set forth in 13 CFR Part 121.
- f. Small Business Rural Area ("SBRA"): Is a business entity meeting the definition of a small business, and is located and conducts its principal operations in a geographic area (county or parish) listed in the SBA's Listing of Non-Metropolitan Counties by State.
- g. Supplier: For purposes of this Section, a supplier is a business which acts as a distributor of materials or equipment and provides a commercially useful function when such activity is traditional in the industry manufacturing the material or equipment supplied. In order to perform a commercially useful function, the firm will normally perform the following functions:
 - (1) Provide technical assistance to the purchaser prior to the purchase, during installation and after the supplies or equipment are placed in service;
 - (2) Manufacture or being first tier below manufacturer of the supplies or equipment supplied;
 - (3) Provide functions other than just accepting and referring request for supplies or equipment to another party for direct shipment to a contractor.

C. Small Business in Rural Areas ("SBRAs") Goals.

- 1. In accordance with EPA's policy, ConsultantName is required to utilize the following affirmative steps:
 - a. Place SBRAs on solicitation lists;
 - b. Make sure the SBRAs are solicited whenever there are potential sources;
 - c. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs;
 - d. Establish delivery schedules, where requirements of work will permit, which could encourage participation by SBRAs; and
 - e. Use the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate.
- 2. The negotiated "Fair Share Percentage" for the SBRAs is one-half of one percent (0.5%).
- 3. There is no formal reporting requirement for SBRAs at this time; however, ConsultantName should maintain records of SBRA participation.

D. Washington State's Voluntary MBE And WBE Goals

- 1. Voluntary MBE And WBE Goals And Steps To Obtain Participation

- a. In accordance with EPA's policy on the utilization of socially and economically disadvantaged individuals and minority business enterprises (MBE) and women business enterprises (WBE) in procurement under assistance programs, the Consultant shall ensure to the fullest extent possible that it subcontracts at least:

Architect/Engineering: MBE 10% WBE 6%

- b. In order to satisfy this policy, and ensure, when possible, the participation of minority and women firms, King County encourages the Consultant to carry out the following affirmative steps. These steps include, but are not limited to:

- (1) Placing qualified M/WBEs on solicitation or bidding lists;
- (2) Assuring that M/WBEs are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by M/WBEs;
- (4) Establishing delivery schedules, where the requirements of this work permit, which encourage participation by M/WBEs; and
- (5) Using the services and assistance of SBA, 206-533-7310 and the Minority business Development Agency of the Department of Commerce (MBDA), 415-744-3001, and the Washington State Office of Minority and Women Business Enterprises, 360-753-9693.

2. Requirements During Contract Performance

a. Substitution Of Subconsultants

- (1) A Consultant may be allowed to substitute subconsultants after it has been notified that it is the selected Consultant, under limited circumstances, only with the written consent of the County.
- (2) If the Consultant proposes to substitute any subconsultant with a M/WBE firm, the County may verify the proposed subconsultant's M/WBE status. If the Consultant proposes to substitute any subconsultant with a non-M/WBE firm, the Consultant shall demonstrate the affirmative steps it took to comply with its good faith requirements.
- (3) The Consultant's compliance with the State Loan requirements is an essential part of the Agreement and a material condition and requirement of the Agreement. Failure of the Consultant to comply with such Loan requirements could cause the County to forfeit or lose State funding. Accordingly, the Consultant's failure to demonstrate the affirmative measures the Consultant took to comply with this Sections good faith requirements shall be considered reasonable grounds for the County to deny the Consultant's request for substitution. The Consultant's non-compliance with the Loan requirements shall constitute grounds to terminate the Agreement for Default.
- (4) The County shall not be responsible or liable for any costs, delays, and/or damages resulting from the County's denial or acceptance of the proposed substitution.

b. Compliance with Good Faith Efforts for New Work

- (1) The Consultant shall take affirmative steps in accordance with the Loan's good faith M/WBE requirements to ensure the maximum practicable opportunity for M/WBE firms to participate in the work under this Agreement.

During performance of the Agreement, if the Total Price is increased, the Consultant shall demonstrate the affirmative steps it took to ensure that M/WBE firms were given an opportunity to compete and participate in the increased work.

c. Record-Keeping Requirements.

- (1) The Consultant shall maintain all records related to the Agreement, for at least six (6) years after final payment or other pending matters are closed, whichever is longer. Such records shall include but not be limited to information necessary to document the Consultant's good faith efforts to comply with the affirmative steps and the Consultant's utilization of M/WBEs and other businesses as subconsultants and suppliers under the Agreement and in its overall public and private business activities for the same period. The Consultant shall also maintain, for at least six years after completion of all work under the Agreement, all requests for proposals/quotes, written or telephone quotes, estimates or proposals submitted to the Consultant. The Consultant shall make such documents available to the County for inspection and copying upon request. The Consultant shall comply with all/any record keeping requirements set forth within the Loan Agreement.
- (2) The Consultant shall include with each Application For Payment a M/WBE Procurements form, which shall include a listing of the products and services provided by M/WBE firms during the period for which payment is being requested. Inclusion of the form is a condition precedent to payment.
- (3) Prior to submitting the application for Final Payment, the Consultant shall provide the County with a copy of all records and information necessary to demonstrate the consultant's good faith efforts to comply with the affirmative steps, including all requests for proposals/quotes, written or telephone quotes, estimates or proposals submitted to the Consultant. Consultant shall also provide affidavits of amounts paid to all subconsultants. Compliance with these requirements is a condition precedent to Final Payment. The Consultant shall not be entitled to payment and the County shall have the right to withhold Final Payment until the Consultant has complied with this provision. The Final Affidavit of Amounts Paid form will be provided to the selected consultant.
- (4) Upon completion of all work and as a condition precedent to final payment, the Consultant shall submit a final Affidavit of Amounts Paid, to the Business Development and Contract Compliance Section. Identify amounts actually paid, and any amounts owed, to each subconsulting firm and/or supplier for performance under the Agreement. Failure to submit such affidavits may result in withholding of payments or the final payment. King County will provide affidavit forms.
- (5) The Consultant shall update the submittals and submit to the King County's Business Development and Contract Compliance Section at the address below.

Office of Business Relations and Economic Development
Business Development and Contract Compliance Section
King County Courthouse M.S. KCC-EX-0402
516 Third Avenue E550

Seattle, WA 98104-3271

Phone: (206) 205-0700

3. Site Visits.

King County, or its designee, may at any time visit the Consultant's offices and the subconsultant's offices to review records related to the solicitation and utilization of, and payments to subconsultants and suppliers, and compliance with any other requirements of this Section. The Consultant shall provide every assistance requested by King County during such visits.

E. Sanctions For Violations

Any violation of the mandatory requirements of the non-discrimination, equal employment, affirmative action and ADA/504 provisions shall be a material breach of contract, for which the Consultant may be subject to damages, withholding payment and any other sanctions provided for by contract and by applicable law.

INCLUDE THE FOLLOWING PARAGRAPH F ONLY IF SEDB GOAL USED

F. Voluntary Small Economically Disadvantaged Business Participation Goal And Contracting Opportunities Pilot Program

1. Contracting Opportunities Pilot Program. The King County Contracting Opportunities Program is a public contracting assistance program that is being implemented on a 1-year pilot basis. The purpose of the Program is to maximize the participation of Small Economically Disadvantaged Businesses (SEDBs) through the use of voluntary participation goals and awarding of proposal evaluation points as an incentive factor in the award of King County contracts for Architectural and Engineering (A&E) and Professional services.
2. Definitions.
 - a. A "Small Economically Disadvantaged Business" (SEDB) means that a business and the person or persons who own and control it are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Program is based on a size threshold for standard business classifications that is set at fifty percent (50%) of the Federal Small Business Administration (SBA) and with the Owners' Personal Net Worth less than \$750K dollars.
 - b. A "Certified Firm" means a business that has applied for participation in King County's Contracting Opportunities Program Pilot, and has been certified as an SEDB by the King County Business Development and Contract Compliance (BDCC) office. Contact the BDCC Office at (206) 205-0700 for information on how to become a certified firm, or to obtain a list of Certified Firms.
3. Voluntary SEDB Participation Goal
 - a. It is King County's policy that small economically disadvantaged businesses shall have the maximum practicable opportunity to participate in the performance of contracts for professional services to King County. The following percentage is the voluntary SEDB goal established for this Contract: SEDB: 3%
 - b. King County may adjust the SEDB participation goal for this Contract to reflect the minimum level of SEDB participation based upon the following:

- (1) Subsequent amendments to this Contract to expand the scope of work projected for SEDBs, or create new opportunities for other SEDBs to participate.
 - (2) If during the term of the Contract, the Consultant determines that it is unable to comply with the SEDB goal, the Consultant shall make a written request to King County to reduce or modify the goal. The request shall describe the Consultant's efforts and inability to obtain SEDBs and must clearly demonstrate that SEDBs were unavailable to meet the SEDB goal. The County will evaluate the request and, if appropriate, direct the preparation of an amendment to reduce or modify the SEDB goal.
4. Determination of SEDB Eligibility. King County will count only the participation of Certified Firms towards the voluntary SEDB goal established for this contract. The County will count the Consultant's identified participation as follows:
- (1) SEDB subconsultant participation shall be calculated as a percentage of the total proposal hours. For example, if the total proposal hours are 100,000 and a SEDB will do work for a total of 10,000 hours the SEDB participation is 10%.
 - (2) SEDB participation shall be counted only for SEDBs performing a commercially useful function according to custom and practice in the industry. A commercially useful function is defined as a specific scope of work for which the SEDB has the management and technical expertise to perform using its own workforce and resources. A SEDB may further subcontract a portion of the work provided that the majority of work (at least 51% of the subcontract amount) is actually being performed by the SEDB that has the contract.
 - (3) When a SEDB performs as a prime consultant or a participant in a joint venture, King County will only count that portion of the total contract hours equal to the distinct, clearly defined portion of the work that the SEDB performs with its own forces.

SECTION 12. PATENTS, COPYRIGHTS AND RIGHTS IN DATA

- A. Any patentable result or materials suitable for copyright arising out of this Agreement shall be owned by and made available to the County for public use, unless the County determines it is not in the public interest that it be owned or available.
- B. The Consultant agrees that ownership of any plans, drawings, designs, specifications, computer programs, technical reports, operating manuals, calculations, notes, and other work submitted or which are specified to be delivered under this Agreement or which are developed or produced and paid for under this Agreement, whether or not complete (referred to in this Section as "Subject Data") shall be vested in the County or such other local, state or federal agency, if any, as may be provided by separate Contract with the County. The Consultant will not be held responsible for unauthorized reuse by the County of the Subject Data.
- C. All such Subject Data furnished by the Consultant pursuant to this Agreement, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page or in the name block of maps as may be determined by the County. The Consultant shall also place its endorsement on all Subject Data furnished

by it. All such identification details shall be subject to approval by the County prior to printing.

- D. All information, materials, data and documentation furnished or made available to the Consultant by the County or its agents and representatives ("County Information") for purposes of performing services on this Project shall remain the property of the County. The Consultant shall obtain no proprietary rights or ownership interests to such County Information. Upon the County's written request, the Consultant shall return or cause to be returned to the County all such County Information remaining in the Consultant's possession at the termination or expiration of the Contract. The Consultant may keep copies of the County Information provided they maintain the confidentiality of the information and obtain the County's prior written consent.
- E. All calculations, notes, draft documents, reports, drawings, specifications, electronic files, including any and all e-mails, and any other materials, information or documentation developed or prepared in the performance of work for this Project ("Consultant Information") shall be owned by and treated as County property. The Consultant shall obtain no proprietary rights or interests to such Consultant Information. All such Consultant Information is for use solely with respect to this Project. Use of such Consultant information by anyone on other projects or for additions to this Project outside the Scope of Work without the specific written consent of the Project Representative is prohibited. Upon the County's written request, the Consultant shall transfer or cause to be transferred to the County all such Consultant Information at the termination or expiration of this Contract. With prior written consent of the County, the Consultant may keep a copy of the Consultant Information provided the Consultant maintains the confidentiality of such information.
- F. The Consultant shall ensure that the foregoing paragraphs are included in each subconsultant's Contract for work on the Project.

SECTION 13. AUDIT AND ACCESS TO RECORDS

- A. The Consultant, including its subconsultants, shall maintain books, records, documents, and other evidence directly pertinent to performance of the work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The County, or any of its duly authorized representatives, shall, for the purpose of audit and examination, have access to and be permitted to inspect such books, records, documents, and other evidence for inspection, audit and copying for a period of six years after completion of the Project. The County shall also have access to such books, overhead data, records and documents during the performance of Project work if deemed necessary by the County to verify Consultant work and invoices, to assist in negotiations for amendments to the Agreement or modifications to tasks, and to resolve claims and disputes. Such information shall include but not be limited to:
 - 1. A statement about the accounting system indicating the following:
 - a. An overview of the accounting system and its capability to accumulate, distribute, and track costs and provide financial information.
 - b. Written procedures and policies concerning the accounting system, timekeeping, payroll, purchased services and materials, direct and indirect cost control, asset capitalization, depreciation, and pre-Contract costs.
 - 2. Chart of accounts including definition of what is included in each account.

3. A statement indicating the basis for the overhead rate if it is historical information. In executing this Agreement, the Consultant certifies under penalty of perjury that the overhead burden rate information separates direct and indirect charges and that no direct charges are included with the indirect charges and that the indirect charges do not include any unauthorized charges per the Federal Acquisition Regulations Part 31, now and as hereinafter amended.
- B. Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).
- C. The Consultant agrees to the disclosure of all information and reports resulting from access to records under subparagraphs A and B of this Section provided that the Consultant is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the Consultant.
- D. The Consultant shall ensure that the foregoing paragraphs are included in each subconsultant's Contract for work on the Project.

SECTION 14. PROHIBITED INTERESTS

- A. No member, officer or employee of the County or its governing body, or of any of its component agencies, during such person's tenure or one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof unless such interest has been disclosed in writing to the County and the County has determined that there are no prohibited conflicts of interest or ethical violations inherent in the circumstances.

SECTION 15. CONTINGENT FEES, GRATUITIES & CONFLICTS OF INTEREST

Consistent with the King County Code 3.04.030, the Consultant agrees as follows:

- A. The Consultant warrants and covenants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the County shall have the right to terminate this Agreement and/or in its discretion to deduct from the Total Price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- B. The Consultant warrants and covenants that no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Consultant or any of its agents, employees or representatives to any official member or employee of the County in an attempt to secure a Contract or favorable treatment in awarding, amending or making any determination related to the performance of this Agreement.
- C. The Consultant warrants and covenants it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the performance of the work and services required to be performed under this Agreement and that it shall not employ any person or agent having any such interest. In event that the Consultant or its agents, employees or representatives hereafter acquire such a conflict of interest, the Consultant shall

immediately disclose such interest to the County and take action immediately to eliminate the conflict or to withdraw from the Agreement as the County may require.

- D. If the County has reason to believe that the covenants set forth in subparagraphs A, B or C of this Section have been breached, the County shall so notify the Consultant in writing. The Consultant shall respond to said notice within ten (10) calendar days of receipt with a detailed written explanation or answer to any facts, allegations or questions contained or referenced in said notice. The Consultant may request a hearing on the matter by the Department's Director which shall be conducted within fifteen (15) calendar days of the receipt by the Director of the request, unless the County and the Consultant concur on a later date. The decision of the Director shall be a prerequisite to appeal thereof to the County Council or to Superior Court in the County of King, State of Washington. If, after consideration of the Consultant's response and any hearing, the Director determines that the covenants have been breached, the Director shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Agreement in the event of said breach and/or prohibited conflicts of interest.
- E. The Consultant agrees not to accept employment or compensation from any person, firm, corporation, business or political entity, or third party where such employment or compensation is either:
 - 1. A conflict of interest; or
 - 2. Likely to lead to a conflict of interest between the County's interests and the interests of such person, firm, corporation, or third party.

SECTION 16. LEGAL RELATIONS

- A. The Consultant shall comply, and shall ensure its subconsultants comply, with all the terms of this Agreement and the County resolutions and federal, state and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.
- B. In performing work and services hereunder, the Consultant and its subconsultants, employees, agents and representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of the County in any manner whatsoever. The Consultant shall not hold itself out as, nor claim to be, an officer or employee of the County by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County. The Consultant shall be solely responsible for any claims/costs and/or losses arising from the Consultant's failure to pay wages, compensation, benefits or taxes and/or pay for services, supplies and/or materials provided by Consultant employees, agents and representatives, including subconsultants, and will protect, defend, indemnify and hold the County harmless therefrom.
- C. To the maximum extent permitted by law, the Consultant agrees to indemnify and save harmless King County, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, reasonable attorney fees and expenses, penalties, judgments, settlements and damages of whatsoever kind or nature arising out of, in connection with, or incident to errors or omissions in the performance of contractual obligations, and/or the negligent performance of work or services provided by or on behalf of the Consultant, except to the extent caused by the negligence of the County. The Consultant's indemnity obligation includes an obligation to (a) satisfy any judgment

or other final decision of a court or other tribunal; (b) pay any reasonable settlement negotiated by the County with respect to claims that are within the scope of the indemnity obligation; and (c) pay all claims against the County by an employee or former employee of the Consultant or its subconsultants, and for this purpose, by mutual negotiation, the Consultant expressly waives, as respects the County only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. The Consultant further agrees to defend all claims against King County and its officers, agents, and employees which, if proven, could result in liability of King County, its officers, agents, or employees for loss or damage caused by any such errors, omissions, or negligent work or services performed by the Consultant. The Consultant's obligation to defend shall include timely payment of all reasonable attorney fees, costs and expenses incurred in the defense of such claims. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney fees and expenses shall be allowed to the prevailing party.

- D. The County's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
- E. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement

SECTION 17. INSURANCE

- A. Prior to execution of the Agreement, the Consultant shall file with King County certificates of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and provides that King County receives notice at least thirty (30) calendar days prior to the effective date of any policy limit or cancellation of required coverages. The Consultant shall notify the County at least thirty (30) calendar days prior to the effective date of any cancellation or reduction in coverage in the policy. The Consultant shall maintain during the entire Contract period and for seven (7) years thereafter, insurance coverage at least as broad as the limits and coverage outlined in this Agreement. Documentation of coverage shall be provided on each insurance renewal date. The Consultant shall, upon demand of King County, make available to King County at Consultant's local office in King County all such policies of insurance and the receipts of payment of premiums thereon. Failure to provide such policies of insurance within a time acceptable to King County shall entitle King County to suspend or terminate the Consultant's work hereunder. Suspension or termination of this Agreement shall not relieve the Consultant from its insurance obligation hereunder.
- B. The Consultant shall obtain and maintain at a minimum the limits of insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to the Consultant under this Agreement. The Consultant shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

- C. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, is acceptable on a "claims made" form.
- D. If coverage is approved and purchased on a "claims made" basis, the Consultant shall continue coverage either through (1) policy renewals for not less than seven years from the date of completion of the work which is the subject of this Agreement or (2) the purchase of an extended discovery period for not less than seven years from the date of completion of the work which is the subject of this Agreement, if such extended coverage is available.
- E. If, in order to meet the requirements of this Section 17, the Consultant must rely on the insurance to be provided by one or more subconsultant, then such subconsultant(s) shall be required to meet all of the requirements herein applicable to the insurance they are providing, and shall include County and Consultant as additional insureds on all liability policies except Professional Liability/Errors & Omissions and Workers Compensation. The County will not make any payments on work performed by subconsultants until all insurance documentation from such subconsultants have been received and accepted by the County.
- F. Provided the affected insurance policies permit the following waiver, without voiding coverage, Consultant and County waive all rights against each other to subrogation for damages covered by property insurance.
- G. The Consultant shall maintain limits no less than, for:
 - 1. **General Liability.** \$@ combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$@ aggregate limit. Coverage shall be at least as broad as Insurance Services Office form number (CG 00 01) covering **COMMERCIAL GENERAL LIABILITY**.
 - 2. **Professional Liability Errors and Omissions.** Coverage will be provided by King County through a project policy for professional liability coverage. This policy includes self insured retention of \$100,000. The Consultant shall be responsible for paying the self insured retention. @ per claim and in the aggregate.
 - 3. **Automobile Liability.** \$@ combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number (CA 00 01) covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent), MCS 90, or auto pollution coverage.
 - 4. **Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.
 - 5. **Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

6. **Contractor's Pollution Liability.** Contractor's Pollution Liability coverage in the amount of \$@ per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the physical injury or destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed.
7. **US Longshoremen & Harbor Workers Coverage.** If this Contract involves work on or adjacent to navigable water, as defined by the U.S. Department of Labor. This Contract requires proof of insurance coverage in compliance with the statutory requirements of Longshoreman and Harbor Workers' Compensation Act administered by the U.S. Department of Labor).
8. **Marine Activities, Boat, Floating Vessel.** If this Contract involves marine activities, or work from a boat, vessel, or floating platform, Consultant shall provide:
 - a. Protection & Indemnity coverage including injury to crew (Jones Act) and passengers; Protection & Indemnity, SP 38, SP23, or its equivalent for \$@ combined single limit per occurrence, and for those policies with aggregate limits, a \$@ aggregate limit
 - b. Hull and Machinery: Hull and Machinery Coverage at Market Value of vessel on American Institute Hull Clauses, 6/2/77 form or its equivalent.
 - c. Pollution Liability (OPA, CERCLA): \$@ and statutory limits of liability as applicable. Pollution insurance to satisfy U.S. Coast Guard requirements as respects the Federal Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended.
- H. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Consultant's liability to the County and shall be the sole responsibility of the Consultant.
- I. The insurance policies required in this Agreement are to contain, or be endorsed to contain the following provisions:
 1. **Liability Policies except Professional Liability & Errors and Omissions and Workers Compensation:**
 - a. The County, its officers, officials, employees and agents are to be covered as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant in connection with this Agreement. Such additional insured status shall include Products Completed Operations.
 - b. To the extent of the Consultant's negligence, the Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the Consultant's insurance or benefit the Consultant in any way.
 - c. The Consultant's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
 - d. The Consultant's Protection and Indemnity (to include Jones Act) policy shall waive rights of subrogation against the County and the County and its officers, officials, agents, employees shall be named insured.

- e. The Certificate of Insurance shall state that Explosion, Collapse, and Underground Damage (XCU) coverage has not been excluded.
- f. The General Liability Policy shall contain a Per Project Aggregate endorsement.
- J. Unless otherwise approved by the County, Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Best's surplus size VIII.
- K. Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the County.
- L. If at any time of the foregoing policies shall fail to meet the minimum standards above, the Consultant shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

SECTION 18. KING COUNTY RECYCLED PRODUCT PROCUREMENT POLICY

- A. The Consultant shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Agreement and shall ensure that, whenever possible, the cover page of each document printed on recycled papers bears an imprint identifying it as recycled paper. The Consultant shall use both sides of paper sheets for copying and printing. If the cost of recycled paper is more than fifteen percent (15%) higher than the cost of non-recycled paper, the Consultant shall notify the Project Representative, who may waive the recycled paper requirement.
- B. The Consultant shall use recycled/recyclable products wherever practical in the fulfillment of this Agreement.

SECTION 19. DISPUTES AND REMEDIES

- A. Choice of Law. This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the Effective Date.
- B. Department Director or Director's Designee Review. All claims, counter-claims, disputes and other matters in question between the County and the Consultant arising out of or relating to this Agreement or the breach of it shall be referred to the Department's Director or a designee for determination, together with all facts, data, contentions and so forth which relate thereto. The Director or a designee shall make a determination within thirty (30) calendar days of such referral.
- C. Alternate Dispute Resolution. Should the claim, counter-claims, or disputes not be resolved, prior to initiating litigation and subsequent to the Department Director's decision, the parties shall attempt to resolve the matter through some mutually agreeable form of Alternate Dispute Resolution (ADR).
- D. Exhaustion of Administrative Remedies. Referral to and determination by, the Director or a designee and ADR shall be a condition precedent to the commencement of a civil action to adjudicate such dispute.
- E. Jurisdiction & Venue. Subject to these provisions herein, the Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement and the laws of the state of Washington shall apply.

SECTION 20. NOTICE

- A. Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth below. Notice shall be considered issued and effective upon receipt thereof by the addressee-party or twenty-four hours after mailing to the place of business set forth below, whichever is earlier.

King County:

Department of @

201 South Jackson Street, KSC-NR-0507

Seattle, WA 98104

Attn: @ PROJECT REP

The Consultant:

ConsultantName

@ ADDRESS

@CITY ZIP

Attn: @PM

SECTION 21. ENTIRETY, AMENDMENT AND EXECUTION OF AGREEMENT

- A. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof and constitutes the entire agreement between the Parties.
- B. The Contract documents included in the Agreement are identified below. Any inconsistency or conflict between the Contract documents shall be resolved by giving precedence in the following descending order of importance:
1. Agreement for Professional Services for ContractTitle, as modified by the latest amendment;
 2. Exhibit A, Scope of Work, as modified by the latest amendment;
 3. Exhibit B, Cost Summary, as modified by the latest amendment;
 4. Exhibit C, Project Schedule, as modified by the latest amendment;
 5. Exhibit F, Key Personnel List;
 6. Exhibit D, Insurance; and
 7. Exhibit E, Non-Discrimination and other Forms.
 8. @Exhibit G, WTD Design Deliverables
 9. @OTHER
- C. This Agreement shall be executed in four (4) counterpart copies, any of which shall be considered for all purposes as the original.

SECTION 22. THIRD PARTY RIGHTS

- A. Nothing in this Agreement is intended to and/or shall be construed to give any rights or benefits to any individual, company, and/or firm other than County and ConsultantName.

SECTION 23. ENVIRONMENTAL PROTECTION AGENCY PROVISIONS

- A. EPA Funding Requirements. King County may be eligible to obtain State Revolving Funds ("SRF") for this Project. These funds contain United State Environmental Protection Agency ("EPA") money administrated by Washington State Department of Ecology ("WSDOE"). Neither the United States nor any of its departments, agencies or

employees is, or will be, a party to this Contract or any lower tier contract. This Contract, any resulting contract or subcontract is subject to applicable EPA procurement regulations contained in 40 CFR Part 31, published July 1994.

1. The Consultant shall comply with all applicable standards, orders, and/or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).
2. The Consultant shall comply with mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective authorized officers or representatives as of the day and year written below.

KING COUNTY

DEPARTMENT OF @

CONSULTANT

LegalName

By _____

@Name of Person Signing, TITLE,

for RON SIMS

Date: _____

By _____

@Name, Title

Date: _____

EXHIBIT A - SCOPE OF WORK

EXHIBIT B - COST SUMMARY

1. Cost Summary By Firm @ page
2. Cost Summary by Task @ pages
3. Fees & MultiYear Escalation of Labor Costs @ page
4. Level of Effort Detail Input @ pages
5. Invoiced Other Direct Cost (ODC) Detail @ pages
6. ODC Cost Backup @ pages
7. Approved Labor Rates For Each Firm @ pages

EXHIBIT C - PROJECT SCHEDULE

EXHIBIT D - INSURANCE

EXHIBIT E - NON-DISCRIMINATION AND OTHER FORMS

EXHIBIT F - KEY PERSONNEL LIST

EXHIBIT G - WTD DESIGN DELIVERABLES